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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/500,246	02/08/2000	Todd P. Foster	6231.N-CN1	2305

7590 06/14/2002

Andrew M Solomon  
Pharmacia & Upjohn Company  
Global Intellectual Property  
301 Henrietta Street  
Kalamazoo, MI 49001

EXAMINER
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CHOI, FRANK I

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 06/14/2002

15

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/500,246

Applicant(s)

FOSTER ET AL

Examiner

Frank I Choi

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 14.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

The request filed on 3/27/2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/500,246 is acceptable and a CPA has been established. An action on the CPA follows.

#### ***Claim Rejections - 35 USC § 101/112***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 47 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention in that Claim 47 is dependent on Claim 13 which has been cancelled.

Claims 26-35 are rejected under 35 U.S.C. 112, second paragraph, as they claim both a composition and method steps of using said composition which renders the claims indefinite. Also, said claims are also rejected under 35 U.S.C. 101 based on the theory that the claim is directed to neither a "process" nor a "composition," but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. See MPEP Sec. 2173.05(p)(II).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis (U.S. Pat. 5,288,496) in view of Herbert et al. (U.S. Pat. 5,654,008) and Okada et al. (4,652,441) for the reasons of record set forth in the prior Office Actions relative to claims 1, 4-15, 17-25 and the further reasons below.

Lewis, Herbert et al. and Okada et al. were discussed in the prior Office Actions and the same are incorporated herein.

Claims 26-30, 33, 36-40, 43-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens et al. for the reasons of record set forth in the prior Office Actions relative to Claims 1, 4-7, 10, 13-15, 17, 18, 21-25 and the further reasons below.

Stevens et al. was discussed in the prior Office Action and the same is incorporated herein.

Claims 26, 29-33, 36, 39-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rickey et al. for the reasons of record set forth in the prior Office Action relative to Claims 1, 6-10, 13, 17-25 and the further reasons below.

Rickey et al. was discussed in the prior Office Action and the same is incorporated herein.

Claims 26-30, 33, 36-40, 43-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guittard et al. for the reasons of record set forth in the prior Office Action relative to Claims 1, 4-7, 10, 13-16, 17, 18, 21-25 and the further reasons below.

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Guittard et al. was discussed in the prior Office Action and the same is incorporated herein.

Examiner notes that no response accompanied the Amendment (3/27/2002). However, since it appears that the new claims appears to be almost identical to the cancelled claims, the rejections over said claims appear to be applicable new claims 26-47. As such, the rejections relative to the cancelled claims are made applicable to their corresponding newly submitted claims.

### *Conclusion*

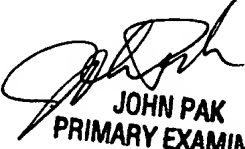
A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machines are (703) 308-4556 or (703) 305-3592.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (703) 308-0067. Examiner maintains a flexible schedule. However, Examiner may generally be reached Monday-Friday, 8:00 am – 5:30 pm (EST), except the first Friday of the each biweek which is Examiner's normally scheduled day off.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. José Dees, can be reached on (703) 308-4628. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (703) 308-1235 and (703) 308-0198, respectively.

FIC

June 12, 2002

  
JOHN PAK  
PRIMARY EXAMINER  
GROUP 1600

